

ROBBINS UMEDA LLP
MARC M. UMEDA (197847)
mumeda@robbinsumeda.com
KEVIN A. SEELY (199982)
kseely@robbinsumeda.com
DANIEL R. FORDE (248461)
dforde@robbinsumeda.com
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991

Co-Lead Counsel for Plaintiffs

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE ACCURAY, INC. SHAREHOLDER
DERIVATIVE LITIGATION

Lead Case No. C 09 05580 CW

This Document Relates To:

ALL ACTIONS

STIPULATION AND ORDER REGARDING
FILING OF CONSOLIDATED COMPLAINT
AND BRIEFING SCHEDULE **AS
MODIFIED**

1 WHEREAS, on February 5, 2010, defendants filed a motion to stay and to dismiss this
2 consolidated federal derivative action (the "Action"), wherein they sought a limited stay of this
3 Action and raised arguments regarding continuous ownership, demand futility, and failure to state a
4 claim with regard to each count in the Consolidated Verified Shareholder Derivative Complaint (the
5 "Complaint");

6 WHEREAS, on March 8, 2010, the defendants filed notice that they have withdrawn their
7 request for a limited stay of this Action because the earlier filed state court action, *Israni v.*
8 *Thomson, et al.*, Case No. 1-09-CV-149157 (Santa Clara County Superior Court), has been
9 voluntarily dismissed;

10 WHEREAS, the hearing on the defendants' pending motion to dismiss the Complaint is
11 scheduled to be heard on April 29, 2010;

12 WHEREAS, on March 16, 2010, the plaintiff in the above-referenced state court action,
13 Sanjay Israni, filed a shareholder derivative complaint ("Israni Complaint") in this District Court,
14 captioned *Israni v. Thomson, et al.*, No. C 10-01117 WHA. The Israni Complaint contains
15 allegations arising out of the same or substantially the same transactions or events as this Action;

16 WHEREAS, it is anticipated by the parties that the Israni Complaint will be consolidated
17 with this Action pursuant to paragraphs 14 and 15 of the December 23, 2009 Stipulation
18 Consolidating Actions, Appointing Co-Lead Counsel, and Related Matters and Order Thereon;

19 WHEREAS, the Israni Complaint is substantively different from the operative Complaint in
20 this Action in the following ways, among others: (i) plaintiff Israni's pleading regarding continuous
21 ownership of Accuray, Inc. ("Accuray") stock is different; and (ii) plaintiff Israni asserts additional
22 causes of action related to insider selling, which allegations are not in the operative Complaint for
23 this Action;

24 WHEREAS, the parties agree that the Israni Complaint and consolidation into this Action
25 will affect defendants' pending motion to dismiss; and
26
27
28

1 WHEREAS, the parties agree that in order to conserve resources and minimize duplication,
2 the parties need time to address the issues raised by the anticipated filing and consolidation of the
3 Israni Complaint;

4 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by plaintiffs and
5 defendants, through their respective counsel of record, as follows:

6 1. Plaintiffs shall file an amended consolidated complaint within 20 days of entry of the
7 order on this stipulation;

8 2. If defendants respond by motion, they shall file a single consolidated motion within
9 30 days of the filing of an amended consolidated complaint;

10 3. Plaintiffs shall file a single consolidated opposition within 30 days of the filing of the
11 motion;

12 4. Defendants shall file a single consolidated reply within 20 days of the filing of the
13 opposition;

14 5. The April 29, 2010 hearing on the motion to dismiss shall be taken off calendar and
15 continued to a date convenient for the Court, consistent with the above proposed briefing schedule;
16 and

17 6. Should any defendant challenge plaintiffs' standing to maintain this derivative action
18 on the grounds that plaintiffs failed to satisfy the requirements of Federal Rule of Civil Procedure
19 23.1 and/or Delaware Chancery Court Rule 23.1, by failing to plead facts sufficient to raise a
20 reasonable doubt that a pre-litigation demand on Accuray's Board would have been futile, the Court
21 will determine this issue as it relates to the amended consolidated complaint based on the
22 membership of the Board on the date the Israni Complaint was filed (March 16, 2010).

23 DATED: March 17, 2010

ROBBINS UMEDA LLP
MARC M UMEDA
KEVIN A. SEELY
DANIEL R. FORDE

26 _____
27 s/Kevin A. Seely
KEVIN A. SEELY

600 B Street, Suite 1900

San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991

JOHNSON BOTTINI, LLP
FRANK J. JOHNSON
FRANCIS A. BOTTINI, JR.
DEREK J. WILSON
501 West Broadway, Suite 1720
San Diego, CA 92101
Telephone: (619) 230-0063
Facsimile: (619) 238-0622

KENDALL LAW GROUP, LLP
HAMILTON P. LINDLEY
3232 McKinney, Ste. 700
Dallas, TX 75204
Telephone: (214) 744-3000
Facsimile: (214) 744-3015

DATED: March 17, 2010

Co-Lead Counsel for Plaintiffs
WILSON SONSINI GOODRICH
& ROSATI, P.C.
BORIS FELDMAN
IGNACIO E. SALCEDA

s/Ignacio E. Salceda
IGNACIO E. SALCEDA

650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Facsimile: (650) 493-6811

Counsel for Nominal Defendant Accuray, Inc.
and individual defendants Euan S. Thomson,
Wayne Wu, Li Yu, Robert S. Weiss, Elizabeth
Davila, John P. Wareham, Robert E.
McNamara, and John R. Adler, Jr.

I, Kevin A. Seely, am the ECF User whose ID and password are being used to file this
Stipulation and [Proposed] Order Regarding Filing of Consolidated Complaint and Briefing
Schedule. In compliance with General Order No. 45, X.B., I hereby attest that Ignacio E. Salceda
has concurred in this filing.

s/ Kevin A. Seely
KEVIN A. SEELY

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. A HEARING ON A MOTION TO DISMISS WILL BE HELD ON JULY 1, 2010 AT 2:00 P.M. IF NO MOTION IS FILED, A CASE MANAGEMENT CONFERENCE WILL BE HELD ON THAT DATE.

3/19/2010

DATED



HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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